STATE OF MICHIGAN

COURT OF APPEALS

JOHN STELMAN,

Plaintiff-Appellee,

v

TROY AUTO BANS, INC, and FERGUSONS ENTERPRISES, INC,

Defendants,

and

ACCIDENT FUND INSURANCE COMPANY OF AMERICA,

Defendant-Appellant.

UNPUBLISHED
May 28, 2013

No. 306469
Wayne Circuit Court
LC No. 09-017600-NO

Before: STEPHENS, P.J., and SAWYER and METER, JJ.

MEMORANDUM.

Defendant, Accident Fund Insurance Company of America (the Accident Fund) appeals by leave granted the trial court's order reinstating the case for purposes of enforcing a previously agreed-upon settlement agreement. We affirm.

The sole issue on appeal concerns a handwritten line of the settlement agreement which addresses plaintiff's repayment to the accident fund of worker's compensation payments made both before and after the settlement agreement. The parties do not agree regarding what the handwritten words are. Plaintiff claims that the handwritten line clearly states that the Accident Fund "accepts $95,000 in full settlement of all claims and waives future claims," and therefore plaintiff's $95,000 check to the Accident Fund satisfies his obligations in full. The Accident Fund claims that the line states that it would receive "$95,000 in full settlement of all liens and leaves future credits" and therefore the Accident Fund is entitled to reduce plaintiff's future worker's compensation payments in addition to receiving the $95,000. The Accident Fund argues that because the parties disagree about what the words in the settlement are, the settlement is ambiguous and the trial court erred by not considering its parol evidence regarding the parties' intent on the day of the facilitation, where the settlement was crafted, and afterwards. At the hearing, the trial court noted that although the handwriting was not as clear as it could be, it was nonetheless clear enough to decipher; the trial court expressly concluded that "it says waives

future claims. And I just don't see that there's any way that you can interpret it to say that it leaves future credits . . . ."

Under Michigan case law, a term in a contract is ambiguous "when its words may reasonably be understood in different ways." *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994). This understanding is consistent with dictionary definitions. For example, Black's Law Dictionary defines "ambiguity" as "uncertainty of meaning or intention, as in a contractual term or statutory provision." Black's Law Dictionary (9th Ed). Similarly, Webster's defines "ambiguous" as "open to or having several possible meanings or interpretations." *Random House Webster's College Dictionary* (1991).

Taken together, these definitions stand for the proposition that a contract term may be ambiguous if the parties could reasonably disagree about the effect of the words used in a contract; that is, if they could reasonably disagree about the legal obligations and rights created by the words used in a contract. However, each definition presupposes that the parties at least agree on what the words themselves are. Indeed, in this case, the parties do not disagree about what the words *mean*, they disagree about what the words *are*. The Accident Fund makes no argument that the term "waives future claims" is itself ambiguous. Rather, its entire argument on appeal is that the contractual term is ambiguous because the term in the settlement does not, in fact, say "waives future claims." We disagree. Where the parties disagree about what the words themselves are, the issue before the trial court is not one of contract ambiguity, but a straightforward factual determination, reviewed for clear error. MCR 2.613(C). In this case, the trial court expressly determined that the words used in the settlement agreement are "waives future claims," and our review of the settlement agreement does not leave us with a "definite and firm conviction that the trial court made a mistake." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

Having concluded that the trial court did not clearly err, we conclude that the contract is unambiguous. "An unambiguous contractual provision is reflective of the parties' intent as a matter of law," and "[i]f the language of the contract is unambiguous, [this Court must] construe and enforce the contract as written." *Quality Products & Concepts Co. v Nagel Precision, Inc*., 469 Mich 362, 375; 666 NW2d 251 (2003). Courts may not consider parol evidence when a contract term is unambiguous, *Salzman v Maldaver*, 315 Mich 403, 412; 24 NW2d 161 (1946), and therefore we decline to consider any parol evidence. The trial court did not err, and the settlement agreement must be enforced as written.

Affirmed. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219(A).

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Patrick M. Meter